

Saxon Theatre Corp. of Boston d/b/a Sack Cinema at Assembly Square and Local 182, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the U.S. & Canada, AFL-CIO, Petitioner. Case 1-RC-17358

November 11, 1981

**DECISION AND DIRECTION OF
ELECTION**

**BY MEMBERS FANNING, JENKINS,
ZIMMERMAN**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on July 6, 8, 9, and 10, 1981, before Hearing Officer Wendy M. Bittner. Thereafter, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 1 transferred this proceeding to the National Labor Relations Board for decision. The Employer and the Petitioner have both filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds they are free from prejudicial error. They are hereby affirmed.

On the entire record in this proceeding, including the briefs, the Board finds:

1. The parties stipulated and we find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The petition filed sought a unit of all full-time and regular part-time projectionists at the Employer's movie theater. The Union contends that the proposed bargaining unit is comprised of two employees, George Giampietro and Philip Solomon. The Employer contends that Giampietro is a supervisor within the meaning of Section 2(11) of the Act and that the proposed unit is therefore inappropriate because it is comprised of only one employee. Thus, the sole issue in this proceeding is whether Giampietro is a supervisor.

The theater which was opened on June 12, 1981, has eight screens and normally shows eight different movies to eight separate audiences. The normal

operating hours are 1 p.m. to midnight, sometimes with extra midnight shows on the weekends. The theater has a manager who is assisted by three assistant managers. The theater also employs 50 to 60 service employees who sell tickets, refreshments, and perform the various ushering and cleanup functions.

The Employer currently employs only the two aforementioned projectionists. They are responsible for threading the films on the projection equipment and for monitoring and maintaining that equipment. The Commonwealth of Massachusetts requires that all projectionists working in commercial movie theaters obtain a license by passing a combined written and physical examination. The projectionists work in a projection booth which is a large room with two desks. The booth is kept locked when not in operation and only the manager has a key.

Giampietro has worked for the Employer at other theaters for 7-1/2 years. Solomon is a new employee. Giampietro works a half day on Wednesday and all day on Thursday, Friday, and Saturday. Solomon works a half day on Wednesday and all day on Sunday, Monday, and Tuesday. Thus, they are never present at the same time. Both are hourly employees. Both are listed on the Employer's payroll printouts as merely "projectionists." Both fill out timesheets which are reviewed for accuracy by the management and submitted to the Employer's main offices. The projectionists receive their paychecks directly from the manager. Both projectionists perform identical functions in the operation of the projection equipment. Giampietro has no special responsibilities and has no special title. The projectionists are both required to fill out the projection booth report form in the same manner and sign it as "operators" and Giampietro's role with respect to these reports is indistinguishable from Solomon's. Both projectionists share the use of two desks in the booth.

The Employer's memorandums of policy go to the manager and not to Giampietro. Giampietro does not attend management meetings. The Employer provides an extensive film and sound presentation course for managers and assistant managers. Giampietro was not invited to attend this course. Only the manager has the authority to call in a service technician to repair the projection equipment.

With respect to the scheduling of hours of work for projectionists, Giampietro has no special authority. Giampietro and Solomon mutually agree on an acceptable schedule. If there is a change in the normal schedule, the projectionists will first inform the manager. If either projectionist is going to be absent from work, he will request the other

to cover his shift or he will find another replacement.

Giampietro is not responsible for performing evaluations of Solomon. There is no evidence that he has ever adjusted grievances, or meted out discipline with respect to Solomon.

Prior to the opening of the theater, Giampietro was asked by management whether he knew a skilled person who might want to work as a projectionist at the theater. Giampietro informed management that he had a friend who was interested, and Giampietro suggested Solomon. Giampietro's knowledge of Solomon and his qualifications resulted from his friendship with Solomon as part of a small group of projectionists and film buffs that normally make themselves aware of job openings in the industry. With respect to Solomon's hourly wage, Giampietro did not initiate any suggestions or recommendations with respect to his pay scale. When asked what he thought Solomon's wage should be, he declined to make a suggestion.

In light of the record herein we are not persuaded that Giampietro is a supervisor. Section 2(11) of the Act defines a supervisor as:

. . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The record reveals Giampietro is merely the Employer's most experienced projectionist. His daily operational routine is identical to that of the other projectionist. It has not been established that he

possesses any of the above indicia of supervisory authority. With the exception of the first week that the theater was open, the two employees never work at the same time. Giampietro is an hourly employee, receives overtime, and exercises no special management privileges. The Employer has presented no documentary evidence from its records to indicate that he is a supervisor.

The lynchpin of the Employer's claim that Giampietro is a supervisor is its contention that he had the power to hire and actually hired Solomon. We find that, in referring Solomon, Giampietro functioned only as a skilled craftsman with knowledge of a pool of qualified applicants and that his role was not that of a supervisor invested with the authority of management to hire.¹

Thus, we find that Giampietro is not a supervisor and properly belongs within the unit. Accordingly, we shall direct an election among the employees in the following appropriate unit, as requested:

All full-time and regular part-time projectionists employed at the Employer's Assembly Square Cinema, Somerville, Massachusetts but excluding all other employees, guards and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]

¹ *Circle Resorts, Inc. d/b/a Circus Circus*, 244 NLRB 880, 882 (1979), *enfd.* in pertinent part 646 F.2d 403 (9th Cir. 1981); *Advance Envelope Manufacturing Company, Inc.*, 170 NLRB 1459, 1465 (1968); *Southern Bleaching & Print Works*, 115 NLRB 787, 790-791 (1956). The Employer contends that Giampietro is a supervisor because he was a supervisor at its Natick theater and his duties at the Somerville theater have remained the same. However his duties at Natick may be characterized, we find that it has not been established that Giampietro possesses supervisory authority, or has exercised such authority, at Somerville.